IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5865 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Y .K. PANDYA

Versus

CADMACH MACHINERY CO. PVT.LTD.

Appearance:

1. Special Civil Application No. 5865 of 1995

MR DM THAKKAR for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 24/03/2004

ORAL JUDGEMENT

1. Heard Learned Advocate Mr.D.M.Thakkar on behalf of the petitioner and Learned Advocate Mr.Nayak appearing

on behalf of the respondent.

2. In the present petition, petitioner has challenged the award passed by the Labour Court, Ahmedabad in Reference No.355/89 dated 30th November 1994, wherein the reference has been rejected by the Labour Court. The contention raised by Mr.Thakkar that in all petitioner workmen completed more than 6 months service even though without following any procedure in law, the service of the petitioner has been terminated on 25th December 1987. He submitted that initially petitioner was appointed on probation in the post of Supervisor in clear vacancy for a period of 6 months on 28th May, 1987 and his probation period was over after completion of 6 months on 28th November, 1987. Thereafter, he continued in service upto 25th December 1987. He submitted that during this period no misconduct was committed by the workmen and there is no such allegations made or charge sheet issued by the respondent against the petitioner. Even though without any justification the service has been terminated by the respondent. Therefore, he raised the dispute before the Labour Court. Before the Labour Court the statement of claim has been filed by the workmen and written statement submitted by the respondent. He submitted that Labour Court has come to the conclusion that after completion of 6 months service petitioner was not confirmed by positive act of the employer and, therefore, whatever period extension further extension of 28 days that may be considered to be a extended period of probation. Therefore, the contention of the petitioner that he deemed to be confirmed after completion of the probation period has been rejected by the Labour Court. He also submitted that Labour Court has committed error that he submitted that though the work has been assessed by the employer and it was found unsatisfactory then it amounts to stigma even though that aspect has been also not appreciated by the Labour Court and, therefore, according to him Labour Court has committed gross error in rejecting the reference.

3. Learned Advocate Mr.Nayak submitted that after completion of probation period of 6 months unless and until the confirmation order is passed by the employer, petitioner will remain as a probation and not become confirmed employee and, therefore, the extended period of 28 days is also considered to be on probation. He also submitted that employer having a right to assess the work and performance of the workmen during the probation period and if employer is found that work is not satisfactory or inefficient then employer having right to

terminate the service of such probation without following any procedure in law. He submitted that similar view has been taken by Apex Court in Commissioner of Police, Hubli and Anr. Vs. R.S.More reported in 2003 (2) Supreme Court Cases page 408 where the Apex Court has said that the expiry of the probation period does not amount to deem to be confirmed and, therefore, whatever extended period is there is to be considered as a probation.

4. The contention of Mr.Thakkar that petitioner is entitled the benefit of Section 25 (f) of the I.D.Act as he has completed 120 days of continuous service within the meaning of Section 25 (B) of the I.D.Act. The said contention is not raised by the petitioner before the Labour Court. However considering the said contention the Section 25 (f) is very clear that if the workmen has completed in less than 1 year service then he is not entitled the benefit of Section 25 (f) of the I.D.Act, 1947. In the facts of this case undisputedly petitioner has worked less than 1 year and, therefore the contention raised by Mr.Thakkar cannot be accepted.

5. The decision of Apex Court which referred by Mr.Nayak reported in (2003) 2 SCC 408. The relevant para 6 and 7 are quoted as under:

> 6. It is contended by Mr.Sanjay R.Hegde, learned counsel for the appellants, that the continuance of the respondent on the post beyond the prescribed probation period or extended period of probation, as the case may be, would not entitle the respondent to claim deemed confirmation, in view of the bar imposed by sub-rule (2) of Rule 5 of the rules, unless a specific order is passed to that effect. The High Court has proceeded on the assumption that the period of probation of two years and six months has expired on 2-12-1994 and thereafter no order has been passed extending the period of probation as provided under Rule 4 and there was also no consideration in terms of Rule 5 of the Rules, at the end of the prescribed period in 1994, but the respondent was allowed to continue as a probationer till he was discharged from service by the impugned order and, therefore, it cannot be said that the respondent continued to be on probation. This finding of the High Court, in our

view, is clearly erroneous. In the instant case, the undisputed facts are that the respondent was appointed on probation for a period of two years and six months. the period of two years and six months expired on 2-12-1994. thereafter, by the order dated 14-3-1996, it was further extended for a period of one year and three months in exercise of powers under Rule 4 of the Rules. It is true that the order of discharge dated 12-11-1997, in exercise of powers under Rule 6 of the Rules, has been passed after the extended period was over. That itself would not entitle the respondent to have claimed deemed confirmation, in view of the bar imposed by sub-rule (2) of rule 5 of the Rules as noticed above.

7. In High Court of M.P. V. Satya Narayan Jhavar a three-Judge Bench of this Court, while examining the question of deemed confirmation in service jurisprudence has categorized three classes of cases on the point. It was pointed out in SCC para 11 at p.169 as under:

11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also

> provided beyond which is is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

6. I have considered the submissions made by both the Learned Advocate and I have also perused the award passed by the Labour Court and observation made in above referred decision of Apex Court. The Labour Court has discussed all the evidence which were on record. The Labour Court has come to the conclusion that initially petitioner was appointed for a period of 6 months thereafter no confirmation order has been passed by the respondent, but petitioner was remained in service for a further period of 28 days which considered to be a extended period of probation and workmen is not getting any right to become confirmed employee. The Labour Court has also considered that right to assess the work for workmen during the probation period that cannot be considered to be a stigma or misconduct and, therefore, no procedure is required to be followed for terminating the service of workmen. This aspect has been properly dealt with by the Labour Court and also proper reasons have been given by the Labour Court. The Labour Court has also considered certain decisions of the Apex Court and come to the conclusion that termination of petitioner is not illegal in any manner as contended by petitioner. Therefore, ultimately the Labour Court has rejected the reference. According to my opinion the Labour Court has rightly dealt with this contention raised by the petitioner and Labour Court has rightly come to the conclusion for that Labour Court has not committed any error and there is no procedural irregularity committed by the Labour Court which require interference by this

Court under Article 227 of the Constitution of India.

7. Hence there is no substance in the present petition. Present petition is dismissed. Rule discharged. No order as to costs.

Date: /3/2004 [H.K.Rathod,J.]

Smita/